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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TABITHA SUSO, an individual, and as guardian of
C.O., a minor,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT, a Clark
County Nevada Government Entity; JESUS JARA,
an individual and in his official capacity as CLARK
COUNTY SCHOOL DISTRICT
SUPERINTENDENT; JOHN ANZALONE, an
individual and in his official capacity as CLARK
COUNTY SCHOOL DISTRICT ASSISTANT
SUPERINTENDENT; FRANCISCO GARCIA, an
individual and in his official capacity as
PRINCIPAL OF CLIFFORD O. FINDLAY
MIDDLE SCHOOL; DOES I through X, inclusive;
DOE PARENTS/GUARDIANS I through X, as
individuals and as parents/guardians of individual
DOES; CCSD EMPLOYEES; and ROE
CORPORATIONS I through X, inclusive jointly
and severally,

Defendants.

Case No.: 2:23-cv-01707-APG-VCF

STIPULATION AND ORDER TO:

- (1) RELIEVE PLAINTIFF OF
JUDGMENT PURSUANT TO
FRCP 59 AND/OR FRCP 60;**
 - (2) OBTAIN LEAVE FOR PLAINTIFFS
TO AMEND THEIR COMPLAINT**
 - (3) WITHDRAW DEFENDANT'S
PENDING MOTION TO DISMISS;**
- AND**
- (4) REMAND CASE TO NEVADA
STATE COURT**

1 This Stipulation is entered into, subject to this Court’s approval, by and between Plaintiff
 2 TABITHA SUSO, an individual, and as guardian of Plaintiff C.O., a minor (“Plaintiffs”) and Defendants
 3 JESUS JARA, JOHN ANZALONE, FRANCISCO GARCIA, and CLARK COUNTY SCHOOL
 4 DISTRICT (collectively, “Defendants”).

5 **I. PROCEDURAL BACKGROUND**

6 On October 19, 2023, Defendants removed this case to this Court, and, on October 30, 2023,
 7 Defendants filed their Motion To Dismiss. ECF Nos. 1, 5.

8 On or about November 13, 2023, counsel for the parties met and conferred telephonically
 9 regarding the pending Motion. As detailed herein, the parties agreed that Plaintiffs would amend their
 10 Complaint to withdraw certain claims and dismiss certain Defendants, that Defendants would withdraw
 11 their Motion To Dismiss, and that the case (with only state-law claims remaining) would be remanded
 12 to Nevada state court.

13 As part of this agreement, the parties agreed that Plaintiffs would have until December 4, 2023,
 14 to file an Opposition to the Motion To Dismiss — an Opposition that would be mooted if a Stipulation
 15 codifying the parties’ agreement were filed and subsequently approved by this Court.

16 Unfortunately, due in part to the intervening Thanksgiving holiday, the parties did not timely file
 17 the Stipulation. Moreover, no party filed any Notice with this Court explaining that such a Stipulation
 18 would be filed. Thus, on December 1, 2023, because no Opposition had been filed, this Court entered
 19 an Order granting Defendants’ Motion To Dismiss. ECF No. 8.

20 The parties therefore file this Stipulation to fulfill the parties’ prior agreement, and also to relieve
 21 Plaintiffs of the judgment pursuant to FRCP 59 and/or FRCP 60.¹

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 24 ¹ This Stipulation, if approved by this Court, will accomplish four separate objectives: (1) relief for
 25 Plaintiffs from the judgment resulting from granting of the Motion To Dismiss; (2) leave for Plaintiffs
 26 to amend their Complaint as described herein; (3) withdrawal of Defendants’ Motion To Dismiss; and
 (4) remand of this matter to Nevada state court.

27 This Court’s Rules clearly provide that “[f]or each type of relief requested or purpose of the document,
 28 a separate document must be filed and a separate event must be selected for that document.” *See* D. Nev.
 R. IC 2-2(b). Therefore, this Stipulation will be filed four times, one for each form of relief requested.

1 **II. TERMS OF STIPULATION**

2 **A. RELIEF FROM JUDGMENT PURSUANT TO FRCP 59 AND/OR FRCP 60**

3 FRCP 59 permits “[a] motion to alter or amend a judgment[,]” and such a motion “must be filed
4 no later than 28 days after the entry of the judgment.” *See* Fed. R. Civ. P. 59(e). FRCP 60 provides
5 that “[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or
6 proceeding for” any of five enumerated reasons not applicable here, or for “any other reason that justifies
7 relief.” *See* Fed. R. Civ. P. 60(b)(6). Such a motion “must be made within a reasonable time and [] no
8 more than a year after the entry of the judgment or order or the date of the proceeding.” *See* Fed. R.
9 Civ. P. 60(c)(1).

10 Here, the judgment at issue was entered on December 1, 2023. ECF No. 9. The parties file this
11 Stipulation on December 8, 2023 — *i.e.*, less than 28 days after the entry of that judgment — thereby
12 satisfying the timing requirements of both FRCP 59 and FRCP 60.

13 The parties respectfully request that this Court alter its judgment under FRCP 59 and/or provide
14 relief from that judgment under FRCP 60, as dismissal of this case occurred only because of the parties’
15 delay in finalizing and submitting this Stipulation, which by its terms moots the Motion To Dismiss that
16 this Court granted.

17 As the parties had already agreed — subject to this Court’s approval — on terms upon which the
18 Complaint would be amended so as to divest this Court of jurisdiction (as no federal question would be
19 presented in the Amended Complaint, and diversity does not exist here), the situation that resulted from
20 the parties’ neglect in failing to timely notify this Court of that agreement and/or file this Stipulation
21 certainly “justifies relief.” *See* Fed. R. Civ. P. 60(b)(6).

22 Such relief would enable the parties to proceed in this matter in Nevada state court on the agreed-
23 upon bases, and would also be in keeping with the Ninth Circuit’s “strong policy preference for deciding
24 cases on the merits.” *See, e.g., Duralar Techs. LLC v. Plasma Coating Techs., Inc.*, 848 Fed. Appx. 252,
25 255 (2021) (citing *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016)).

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B. AMENDMENT OF COMPLAINT

Subject to this Court's approval, the parties agree that Plaintiffs will amend their Complaint to (1) dismiss their claims under 28 U.S.C. Section 1983 (Civil Rights Act) and 20 U.S.C. Section 1681 (Title IX); and (2) dismiss all claims against individual Defendants Jesus Jara, Kevin McPartlin, and Francisco Garcia, leaving as Defendants only Clark County School District and those named under fictitious names.

The parties further agree that this amendment of the Complaint will also eliminate the separate causes of action for Negligence Per Se and Respondent Superior, retaining the allegations supporting those theories of liability only as part of the Negligence causes of action; and revise the headings and allegations to more clearly state the causes of action specifically against the proper Defendants (*i.e.*, negligence causes of action against Clark County School District and the fictitious Defendants; IIED, NIED, and Child Abuse, Neglect, And Endangerment claims only against the fictitious Defendants.

Pursuant to Local Rule 15-1(a), Plaintiffs' proposed Amended Complaint is attached hereto as **Exhibit 1.**

C. WITHDRAWAL OF MOTION TO DISMISS

Subject to this Court's approval, the parties agree that Defendants will withdraw their Motion To Dismiss (which was granted by this Court on December 1, 2023). ECF Nos. 5, 9.

D. REMAND TO NEVADA STATE COURT

The parties agree that, if Plaintiffs' Complaint were amended to eliminate the Civil Rights and Title IX claims, as requested herein, this Court would be divested of jurisdiction, as no "federal question" would remain, and diversity does not exist here. The parties therefore respectfully request that, if this Court approves the amendment of that Complaint, this Court then remand this case to Nevada state court upon filing of the Amended Complaint.

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The parties further agree that, upon remand, the remaining named parties (*i.e.*, Plaintiffs and Clark County School District) will stipulate in Nevada state court to Defendant's standard protective order pursuant to the Family Educational Rights and Privacy Act (FERPA).

IT IS SO STIPULATED.

DATED this 8th day of December, 2023.

DATED this 8th day of December, 2023.

**ERIC BLANK INJURY
ATTORNEYS**

**CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL**

/s/ Eric R. Blank

/s/ Melissa Alessi

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ORDER

THIS COURT having considered the foregoing Stipulation, and GOOD CAUSE appearing therefor, it is hereby ORDERED that (1) this Court's Order granting Defendants' Motion To Dismiss (ECF No. 9) is VACATED; (2) Plaintiffs are GRANTED leave to file their Amended Complaint; (3) Defendants' Motion To Dismiss (ECF No. 5) is WITHDRAWN; and (4) upon filing of the Amended Complaint, this matter shall be remanded to Nevada state court, as no basis for federal jurisdiction will remain.

DATED this 11th day of December, 2023

By



UNITED STATES DISTRICT JUDGE